IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 593 of 2002
in
SPECIAL CIVIL APPLICATION No 3683 of 2002
with
CIVIL APPLICATION No 5781 of 2002
with
LETTERS PATENT APPEAL No 752 of 2002
in
SPECIAL CIVIL APPLICATION No 3683 of 2002
with
CIVIL APPLICATION No 7089 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JIVTIBEN SHIVABHAI KERALIYA

Versus

LEGAL HEIRS POPAT KHIMA RAMANI

Appearance:

1. LETTERS PATENT APPEAL No. 593 of 2002
MR SB VAKIL, Sr.Counsel with MR. NAVIN PAHWA

for M/S THAKKAR ASSOC. for Appellant.
MR DD VYAS, Sr. Counsel with MR. DHAVAL
D VYAS for M/S.VYAS ASSOCIATES for
Respondent Nos. 1/1- 1/3
MR VM PANCHOLI, AGP for Respondent Nos. 2 to 4

2. LETTERS PATENT APPEAL No. 752 of 2002
MR DD VYAS, Sr. Counsel with MR. DHAVAL
D VYAS for M/S.VYAS ASSOCIATES for Appellants
MR VM PANCHOLI, AGP for Respondent No. 1 to 3
MR SB VAKIL, Sr.Counsel with MR. NAVIN PAHWA
for M/S THAKKAR ASSOC. for Respondent No. 4

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 13/12/2002

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

#. Both the appeals are admitted. Mr.Dhaval D. Vyas waives service of notice for Respondent Nos. 1/1 to 1/3 in L.P.A. No. 593/02 and Mr. Navin Pahwa waives service of notice for Respondent No. 4 in L.P.A. No. 752/02. The learned A.G.P. Mr. V.M. Pancholi on being told that the appearance of the quasi-judicial authorities is only formal, he appears for the Respondent Nos. 1, 2 and 3 in L.P.A. No.752/02 and for Respondent Nos. 2, 3 and 4 in L.P.A. No.593/02.

#. At the instance of the learned counsel appearing for the appellants, the matters are taken up for final disposal. As per the consensus, since the quasi-judicial authorities are only formal parties, the matters are not required to be adjourned for any reply of these parties because they are not supposed to contest the matters on merits as regards the disputes between these appellants of the two Letters Patent Appeals which are directed against the impugned order of the learned Single Judge made on 18.4.2002.

#. The dispute relates to the cancellation of the entry made in 1978 in favour of the predecessor of the appellant of Letters Patent Appeal No. 752/02. The entry which was made in 1978 was made on the basis of a registered Will as well as a registered Adoption Deed. The Deputy Collector by his order dated 13.10.99 made in appeal, had dismissed the application for cancellation of the entry on the ground that it was belated. The

Collector, by his order dated 27.9.2001, however, allowed the further appeal and cancelled the entry for the reasons stated in the order. The matter was carried to the Principal Secretary by way of revision application which was rejected on 28.3.2002. The petition filed by the heirs of Popat Ladha, i.e. the appellants of Letters Patent Appeal No. 752/02 was dismissed by the impugned order in so far as the petitioners had challenged the first part of the orders of the Collector and the Principal Secretary, setting aside the entry no. 3635, but a direction was given that the revenue authority shall not delete or cancel other subsequent entries regarding sale of portion of the land described in the order until final outcome of the Civil Suit No. 892/98, which is pending before the Civil Court, Rajkot. The petition was allowed in so far as the petitioners challenged the second part of the orders of the Collector and the Principal Secretary by which the subordinate revenue authorities were directed to take steps for mutating name of the Respondent No. 4 of the petition as the owner of the land in question. It was clarified that when any party makes any application for mutating the name in village form No. 6 for the land in question, the revenue authority shall await the outcome of the Regular Civil Suit No. 892/98 pending in the Civil Court, Rajkot and on receiving such verdict, the entries shall be made on the basis of the decision of the Civil Court. A direction was also given that as far as the entries in village form No. 7/12 were concerned, the parties in possession i.e. the petitioners or the persons claiming through Popat Ladha or through the petitioners may make application to the competent authority for entering the names in such village form No. 7/12 and the revenue authority shall consider the same in accordance with law and on the basis of the interim order dated 9.10.'97, as confirmed by the appellate order dated 10.12.'98 in Civil Misc. Appeal No. 11/98, for the limited purpose of mutation of the entries in the village form No. 7/12 for payment of land revenue. It was ordered that it would be open for either of the parties in Regular Civil Suit No. 892/98 to request the Civil Court to hear and decide the suit expeditiously. The petition was accordingly partly allowed.

#. It is clear that no proceedings in respect of the mutation of entries can determine the rights of the parties and, therefore, the learned Single Judge has rightly directed that the revenue entries should follow the outcome of the civil proceeding.

#. In the facts and circumstances of the case and by

consensus of the contesting parties, we direct that the Civil Suit being Regular Civil Suit No. 892/98 will be heard and decided by the concerned Civil Court, Rajkot on or before 30th April, 2003. The learned counsel appearing in both these appeals stated that the parties will cooperate in the hearing of the Civil Suit. It is made clear that none of the observations or findings in any of the orders of the revenue authorities or of the learned Single Judge will in any manner affect the outcome of the said Civil Suit which will be decided by the Civil Court in accordance with law. Subject to these observations and directions, these appeals are dismissed with no order as to costs. No orders on the Civil Applications are required to be passed as the appeals are dismissed. These applications stand disposed of accordingly, with no order as to costs.

[R.K. ABICHANDANI, J.]

[SHARAD D. DAVE, J.]
pirzada/-